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IN THE

Supreme Court of the United States

KELLY A. AYOTTE,
Attorney General of New Hampshire,

Petitioner,

v.

PLANNED PARENTHOOD OF
NORTHERN NEW ENGLAND, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

BRIEF *AMICI CURIAE* OF THE RELIGIOUS COALITION FOR REPRODUCTIVE CHOICE AND FORTY-ONE OTHER RELIGIOUS AND RELIGIOUSLY AFFILIATED ORGANIZATIONS IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*

Amici are religious organizations and religiously affiliated organizations dedicated to preserving religious freedom for all persons and to protecting a woman's health and right to carry or terminate her pregnancy in accordance with her religion and values.[1] The statements of interest provided by *amici*, included in Appendix B to this brief, demonstrate their shared interest (from different perspectives) in the right of women of all ages to make reproductive choices in accordance with their individual conscience and free from governmental interference. A full listing of the forty-two (42) organizations signing this brief as *amici curiae* appears in Appendix A.

Because *amici* value life and health, and recognize the many divergent theological perspectives regarding abortion, *amici* agree that all women whose health is at risk should be free to seek the best available medical advice, without governmental coercion or constraint, in making the difficult decision whether to terminate a pregnancy. Adherence to these principles compels *amici* to support Respondents in this case.

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1. *Amici* submit this brief *amici curiae* with the consent of the parties. Letters providing consent of the parties are being filed with the Clerk of the Court concurrently with the filing of this brief. Pursuant to Supreme Court Rule 37.6, *amici* state that the brief in its entirety was drafted by *amici curiae* and their counsel. No monetary contribution toward the preparation or submission of this brief was made by any person other than *amici curiae*, their members, or their counsel.

SUMMARY OF ARGUMENT

Many religions, including the varied faiths represented by *amici*, cherish human life and health as among their most important values. Many of these religions hold that it is morally appropriate for women of all ages to consider – in accordance with their faiths – the threat to their lives or health in deciding whether to terminate a pregnancy. The New Hampshire Parental Notification Prior to Abortion Act, N.H. Rev. Stat. Ann. §§ 132:24-132:28 (Supp. 2004) (the "New Hampshire Act" or the "Act"), lacks a health exception and an adequate life exception, as required by this Court's precedents. In emergency medical situations, the Act unconstitutionally threatens the health and lives of young women, and undermines their right to choose an abortion in accordance with religious faiths that place great value on women's health and lives.

The religious component of the rights of privacy and of reproductive choice have been repeatedly recognized in this Court's opinions, including in cases as early as *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), and as recent as *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). Many Americans reflect upon their religious beliefs and moral principles when making important private decisions about family, marriage, and procreation. The variety of religious teachings and beliefs about abortion underscores the importance of maintaining a private sphere – free from undue government interference – in which women can make choices to protect their own lives and health in accordance with their faiths and their consciences. This private sphere extends to minor women who are faced with pregnancies that threaten their lives and health. Although *amici* support and encourage parental guidance in young

women's major life decisions, including whether to end a pregnancy, they recognize that state-mandated parental involvement can sometimes harm the minor, such as where the family is dysfunctional or where an emergency medical situation requires immediate action. The Constitution protects minors from such threats to their lives, health, and religious beliefs.

ARGUMENT

I. The Act's Inadequate Life Exception and Lack Of A Health Exception Unconstitutionally Restrict Young Women's Access to Safe Abortion Procedures.

The Court has repeatedly held that statutes restricting access to abortions must contain exceptions to preserve the lives and health of women. *See Stenberg v. Carhart*, 530 U.S. 914, 929-30 (2000); *Casey*, 505 U.S. at 879-80; *Roe v. Wade*, 410 U.S. 113, 164-65 (1973). Many religions place a high value on women's health and hold that it constitutes an important – and for some religions, dispositive – factor for women to consider in deciding whether to terminate a pregnancy. *See* Part I.A, *infra*. The absence of an adequate life exception and any health exception in the New Hampshire Act restricts access to abortion in some circumstances where health or life are threatened. The Act therefore represents an unconstitutional threat to young women's health and life, and infringes on their ability to choose an abortion in accordance with religious views that place great value on women's health and life. Because the State of New Hampshire has failed to articulate a persuasive justification for the Act's lack of an adequate life exception and any health exception, the Act is an unconstitutional infringement of the right to make the decision to terminate a pregnancy free from undue government interference. *See* Part I.B, *infra*.

A. Many Religions Place Great Value on the Preservation of the Health and Lives of Women, Including Through Abortion in Appropriate Circumstances.

Diverse religions, including all of the religions represented by *amici*, *see* Appendix B, hold respect for human life and health as one of their most important values. For some faiths, this value is paramount and *requires* that a pregnant woman have the option to choose an abortion when her health or life is at risk. For other faiths, one's health is one of several considerations a woman must weigh in making a personal choice about her pregnancy. In either case, a threat to the life or health of a pregnant woman or teen not only carries potential physical consequences, but also seriously implicates her religious values. State restrictions on women's choices in such circumstances therefore threaten both physical health and religious values.

Some faiths, including the Jewish members of RCRC, believe that a woman's life and health are of paramount importance and that, in some cases, the availability of abortion is a religious necessity. The United Synagogue of Conservative Judaism stated in 1991 that

> under special circumstances, Judaism chooses and requires abortion as an act which affirms and protects the life, well being and health of the mother. . . . [T]o deny a Jewish woman and her family the ability to obtain a safe, legal abortion when so mandated by Jewish tradition, is to deprive Jews of their fundamental right of religious freedom.

United Synagogue of Conservative Judaism Resolution on Abortion, Passed at 1991 Biennial Convention, *available at*

http://www.uscj.org/SocPolAbortion_Contr5481.html; *see also* David M. Feldman, Marital Relations, Birth Control, and Abortion in Jewish Law 271-84 (Schocken Books 1974) (1968); Hayim Halevy Donin, To Be a Jew 140-41 (Basic Books 1972) ("All halakhic scholars agree that therapeutic abortions – namely, abortions performed in order to preserve the life of the mother – are not only permissible but mandatory.").

Christian faiths, including members of RCRC, also place a high value on health and life. *Amici* believe that women's health and life should be respected and safeguarded when a woman considers the ramifications of her pregnancy. Women must be permitted to reflect upon the importance of their own health and lives when they make highly personal, religious decisions about their pregnancies.

Amici are not alone in these beliefs. A colloquium of theologians sponsored by the Religious Institute on Sexual Morality, Justice, and Healing and funded by the Robert Sterling Clark Foundation recently wrote that these principles are shared by many religious traditions:

> Religious traditions have different beliefs on the value of fetal life, often according greater value as fetal development progresses . . . [but] we uphold the teaching of many religious traditions: the health and life of the woman must take precedence over the life of the fetus.

Religious Institute on Sexual Morality, Justice, and Healing, An Open Letter to Religious Leaders on Abortion as a Moral Decision (2005), *available at* http://www.religiousinstitute.

org/Abortion_OpenLetter.pdf. The United Methodist Church has stated:

> Our belief in the sanctity of unborn human life makes us reluctant to approve abortion. But we are equally bound to respect the sacredness of the life and well-being of the mother, for whom devastating damage may result from an unacceptable pregnancy. In continuity with past Christian teaching, we recognize tragic conflicts of life with life that may justify abortion, and in such cases, we support the legal option of abortion under proper medical procedures.
>
> * * *
>
> When an unacceptable pregnancy occurs, a family – and most of all the pregnant woman, is confronted with the need to make a difficult decision. We believe that continuance of a pregnancy which endangers the life or health of the mother, or poses other serious problems concerning the life, health, or mental capability of the child to be, is not a moral necessity. In such cases, we believe the path of mature Christian judgment may indicate the advisability of abortion. We support the legal right to abortion as established by the 1973 Supreme Court decision. We encourage women in counsel with husbands, doctors, and pastors to make their own responsible decisions concerning the personal and moral questions surrounding the issue of abortion.

The Book of Resolutions of the United Methodist Church 44, 129 (The United Methodist Publishing House 2004). The

Evangelical Lutheran Church in America stated in 1991 that it may be morally responsible to terminate a pregnancy where necessary to protect the life of the woman. *See* A Social Statement on Abortion § IV.B (Evangelical Lutheran Church in America, Department for Studies, Division for Church in Society 1991), *available at* http://www.elca.org/socialstatements/abortion/. The Presbyterian Church (U.S.A.) has stated its belief that abortion can be an acceptable moral choice "when necessary to save the life of the woman, [or] to preserve the woman's health in circumstances of a serious risk." Statement on Post-Viability and Late-Term Abortion 2 (Presbyterian Church (U.S.A.) 2003). The Episcopal Church has expressed its opposition to any legislation that would limit women's access to safe means of acting on the decision to obtain an abortion. *See* Reaffirm General Convention Statement on Childbirth and Abortion, Journal of the General Convention of the Episcopal Church 1994, 323-25 (General Convention 1995), *available at* http://www.episcopalarchives.org/cgi-bin/acts_new/acts_resolution.pl?resolution=1994-A054.

Although there is a diversity of religious views on abortion when the health and life of the woman are threatened, many religions agree that the health and life of the woman is an important value that is relevant to the difficult choice of whether to continue or terminate a pregnancy. As discussed in the next section, the New Hampshire Act at issue here is an unconstitutional restriction of the right of a minor woman to make the decision, in accordance with the dictates of her faith, to preserve her health or even life by terminating a pregnancy.

B. The Absence of Adequate Life and Any Health Exceptions in the Act Results in an Unconstitutional Threat to Minors' Health and Religious Values.

The New Hampshire Act contains no exception for the health of the young woman, and as the First Circuit recognized, it contains an inadequate exception for the life of the young woman. In emergency medical situations, these deficiencies threaten minors' health and lives in violation of the teachings of many faiths. For young women belonging to faiths holding that the availability of abortion is a moral necessity when their health or lives are jeopardized, the Act's inadequate emergency exceptions force them to violate the teachings of their religions. For young women belonging to faiths that encourage consideration of health and life in making a decision in accordance with their religious values, the Act's lack of these constitutionally-mandated exceptions preempts the searching moral reflection reflected in these faith traditions. New Hampshire's stated interests in support of the Act have little force when a minor's health or life is at risk. Accordingly, the Act's restrictions cannot be sustained.

The Court has held on several occasions that abortion regulations must contain exceptions to preserve the life and health of women. *See Stenberg*, 530 U.S. at 929-30; *Casey*, 505 U.S. at 879-80; *Roe*, 410 U.S. at 164-65. These constitutionally-mandated exceptions safeguard the health and lives of women, and they permit young women to choose to terminate a pregnancy in accordance with religious beliefs that place a high value on health and life.

Because the Act contains no explicit health exception, it will force some young women in endangered health to forego or postpone abortions while they wait for judicial bypasses

to occur or for the 48-hour waiting period following parental notification to elapse. *See* Goldner Decl. ¶¶ 9, 12, 13, Jt. Appx. at 24-26. In addition to posing a threat to their physical health, this requirement undermines some minors' religious faith. Women whose religion requires that they have the option to choose an abortion in these circumstances are prevented from exercising their faith, while women whose religion encourages them to make a conscientious personal decision in light of the importance of the value of health and life are deprived of an authentic moral choice. This dilemma applies with equal force in situations where the inadequate life exception poses a risk to young women's lives.

The state interests underlying the Act – providing minors with parental guidance and promoting minors' health by giving a parent the opportunity to provide medical history information, *see* Petitioner's Br. at 6 – simply cannot justify its lack of exceptions to account for an emergency which threatens the life or health of the minor and in which insufficient time exists to notify a parent or to obtain a judicial bypass. In those circumstances, parental involvement cannot help before it is too late. But the New Hampshire Act would still mandate that a woman needlessly delay an abortion, even if it threatens her life or health, and force her to ignore the teachings of her faith. Because Petitioner offers no state interest that would justify this result, the Act's lack of a health exception and an adequate life exception is unconstitutional.

II. Minor Women Should Have the Privacy to Make the Decision Whether to Terminate a Pregnancy in Accordance with their Religious Beliefs.

A. The Right to Choose an Abortion Implicates Religious Values As Well As Privacy.

The role that religious values play in a woman's decision whether to terminate a pregnancy, and whether to terminate a life or health-threatening pregnancy, are reflected in the precedents of this Court establishing the constitutional right of reproductive choice.

The Constitution protects the rights of individuals to make personal decisions relating to marriage, procreation, contraception, child birth, family relationships, child rearing, and education free from undue government interference. *See Casey*, 505 U.S. 833, 851 (1992). Although doctrinally grounded in the right to privacy encompassed by the Due Process Clauses of the Fifth and Fourteenth Amendments, *see Roe*, 410 U.S. at 153, the Court has repeatedly recognized that these personal decisions are intimately bound with individuals' religious views. The reproductive rights recognized in *Roe* and *Casey* thus protect women's religious values, in addition to their privacy.

In reaffirming the central holding of *Roe* in *Casey*, the Court explained that "the Constitution places limits on a State's right to interfere with a person's most basic decisions about family and parenthood, as well as bodily integrity." *Casey*, 505 U.S. at 849 (citations omitted). The Court recognized the religious interest underlying this principle as applied in the abortion context:

> Men and women of good conscience can disagree, and we suppose some always shall disagree, about the profound moral and spiritual implications of terminating a pregnancy, even in its earliest stage. Some of us as individuals find abortion offensive to our most basic principles of morality, but that cannot control our decision. Our obligation is to define the liberty of all, not to mandate our own moral code. The underlying constitutional issue is whether the State can resolve these philosophic questions in such a definitive way that a woman lacks all choice in the matter. . . .
>
> These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.

Id. at 850-51; *see also id.* at 852 ("The destiny of the woman must be shaped to a large extent on her own conception of her spiritual imperatives and her place in society.").

The *Casey* Court's articulation of the liberty interest in the Due Process Clause encompasses two distinct but related aspects: (1) an individual's right to make important, life-defining decisions free from undue governmental interference; and (2) a prohibition on government enforcement of a single approach to such important decisions, because people have

various religious views about them. This formulation is strikingly similar to the Court's jurisprudence relating to the First Amendment's religion clauses. The prohibition against legislation "respecting an establishment of religion or prohibiting the free exercise thereof," U.S. Const. amend. I, has a "double aspect":

> On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion.

Cantwell v. Connecticut, 310 U.S. 296, 303 (1940). The "individual's freedom to choose his own creed is the counterpart of his right to refrain from accepting the creed established by the majority." *Wallace v. Jaffree*, 472 U.S. 38, 52 (1985).

In addition to sharing this "double aspect," the *Casey* Court's emphasis on freedom of conscience is also an important theme of the Court's religious liberty cases. *See id.* at 53; *McCreary County, Kentucky v. Am. Civil Liberties Union*, 125 S. Ct. 2722, 2746, 162 L. Ed. 2d 729, 761 (2005) (O'Connor, J., concurring) ("Our guiding principle has been James Madison's – that '[t]he Religion . . . of every man must be left to the conviction and conscience of every man.'") (quoting Memorial and Remonstrance Against Religious Assessments, 2 Writings of James Madison 183, 184 (G. Hunt ed. 1901)). Indeed, freedom of conscience is so fundamental that it has been identified as "the central liberty that unifies the various Clauses in the First Amendment." *Wallace*, 472 U.S. at 50.

The interconnections between the Court's religious liberty cases and its privacy jurisprudence are not surprising. Decisions concerning the most private and "personal choices a person may make in a lifetime," *Casey*, 505 U.S. at 851 – such as decisions about family, marriage, procreation, and personal autonomy – are the same decisions for which many, if not most, Americans draw guidance from their religious beliefs. The diversity of religious views about these issues, *see* Part II.B *infra*, confirms that they should remain in a private sphere, unburdened by government intrusion, where individuals can follow the dictates of their faiths.

Casey was not the first decision to recognize that religious freedom forms an important part of the privacy and liberty interests protected by the Due Process Clause. In *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925), the Court affirmed the right of parents to select private, religious schools for their children. In the abortion context, the Court has long recognized that religious beliefs significantly inform many people's views about abortion. *See Roe*, 410 U.S. at 116 ("One's philosophy, one's experiences, one's exposure to the raw edges of human existence, one's religious training, one's attitude toward life and family and their values, and the moral standards one establishes and seeks to observe, are all likely to influence and color one's thinking and conclusions about abortion."); *see also United States v. Vuitch*, 402 U.S. 62, 78 (1971) ("Abortion statutes deal with conduct which is heavily weighted with religious teachings and ethical concepts.").

It is therefore clear that in safeguarding women's reproductive rights, the Constitution also protects a woman's right to remain true to her faith. The Court's prohibition of government regulations imposing an "undue burden" on

abortion, *see Casey*, 505 U.S. at 876, preserves women's freedom to make important decisions about their lives and their health in accordance with their religious values.

B. The Variety of Religious Views Regarding Abortion Justifies Protecting a Woman's Right to Terminate Her Pregnancy Free From Undue Government Interference.

There are diverse theological perspectives regarding abortion, and many different views regarding the morality of abortion, even within individual denominations and religions. The plurality of religious views regarding abortion is a testament to the intensely personal nature of this decision, and as discussed in Part II.A above, justifies its protection from undue governmental mandates or interference.

The Episcopal Church first acknowledged its support for women's right to choose abortion free from governmental interference in 1967. In that year, the General Convention expressed its "unequivocal" opposition to any governmental act that "abridges the right of a woman to reach an informed decision about the termination of pregnancy." Reaffirm General Convention Statement on Childbirth and Abortion, Journal of the General Convention of the Episcopal Church 1994, 325 (General Convention 1995), *available at* http://www.episcopalarchives.org/cgi-bin/acts_new/acts_resolution.pl?resolution=1994-A054.

Official Roman Catholic doctrine makes the contrasting pronouncement that abortion is immoral. *See, e.g.*, U.S. Catholic Conference, Statement on Abortion (1985), in The Churches Speak on Abortion 17 (J. Gordon Metton ed., Gale Research Inc. 1989). Some Roman Catholics, however, have

advocated religious views that would tolerate abortion in certain circumstances. For example, Catholics for a Free Choice has stated that there "is much in the Catholic tradition that supports the pro-choice position. . . . [A] careful reading of church documents shows that while the prohibition of abortion is a serious teaching, room remains for Catholics to support the legalization of abortion and even its morality in a wide range of circumstances." Frances Kissling, Prayerfully Pro-Choice: Resources for Worship 112 (Religious Coalition for Reproductive Choice 1999).

As indicated in Part I.A., *supra*, there is agreement within the Jewish tradition that abortion is to be permitted, and is sometimes a required option, in situations where the life or health of the woman is threatened.

The Presbyterian Church has stated:

> The Presbyterian Church exists within a very pluralistic environment. Its own members hold a variety of views. It is exactly this plurality of beliefs that leads us to the conviction that the decision regarding abortion must remain with the individual, to be made on the basis of conscience and personal religious principles, free from governmental interference.

A Legacy of Choice, Church & Society, Nov./Dec. 2002, at 81 (quoting Presbyterian Church (U.S.A.), "The Covenant of Life . . ." (1983)).

Similarly, the United Methodist Church encourages women, "in counsel with husbands, doctors, and pastors to make their own responsible decisions concerning the personal

and moral questions surrounding the issue of abortion." The Book of Resolutions of the United Methodist Church 129 (The United Methodist Publishing House 2004).

In 1996, sixty-nine religious leaders wrote to President Clinton to express their opposition to federal "partial birth abortion" legislation. They wrote:

> We are convinced that each woman who is faced with such difficult moral decisions must be free to decide how to respond, in consultation with her doctor, her family and her God. . . . [N]one of us can discern God's will as well as the woman herself, and that is where we believe the decision must remain.

Letter from Religious Coalition for Reproductive Choice, *et al.* to President William Jefferson Clinton (Apr. 29, 1996) (on file with Religious Coalition for Reproductive Choice); Laurie Goodstein, "Religious Leaders Back Abortion Ban Veto," Washington Post, Apr. 30, 1996, at A4.

The wide range of religious views discussed above are expressed in religious teachings across the nation, such as the sexuality education programs offered by most religious denominations in the United States. *Amici* fear that restrictions on abortion like the New Hampshire Act will interfere with these religious teachings concerning the morality of abortion, and will impair minors' ability to protect their health and lives in accordance with their religious values.

C. The Right to Decide to Terminate a Pregnancy in Accordance with Religious Values and Free From Undue Government Interference Extends to Minors.

Amici strongly believe that minors benefit from thoughtful parental guidance in major life decisions, including the decision whether to terminate a pregnancy. *Amici* therefore agree with the United States Conference of Catholic Bishops that families should work together to reach a moral resolution of a significant issue, such as abortion, and that parents should provide support to their minor daughters. *See* Brief *Amici Curiae* of the United States Conference of Catholic Bishops and Roman Catholic Bishop of Manchester in Support of Petitioner at 13. But *amici* and other religious groups oppose legislation that *mandates* parental involvement in the minor's decision.

A decision about abortion involves many factors, including religious beliefs and moral understandings. Those beliefs and understandings are present throughout an individual's life, and although they may change over time, they are not negated by the fact of minority. *See, e.g., Hodgson v. Minnesota*, 497 U.S. 417, 434-35 (1990) (noting that the constitutional "right to make [an abortion] decision do[es] not mature and come into being magically only when one attains the state-defined age of majority.") (internal quotation marks omitted).

This is not to say that young women cannot benefit from the input of their parents in making such a difficult decision. *Amici* believe that minors do benefit from parental support and guidance in the abortion decision. But state-mandated discussion of this decision is inappropriate for many reasons,

including that it may worsen existing problems within some families. Some religious groups have recognized that not all family relationships are healthy, and not all parents are able to provide moral support or thoughtful guidance to their teenage daughters. For example, the Episcopal Church has recognized that mandatory parental involvement may put some minors at risk. *See* Oppose Certain Legislation Requiring Parental Consent for Termination of Pregnancy, Journal of the General Convention of the Episcopal Church 1991, 839 (General Convention 1992), *available at* http://www.episcopalarchives.org/cgi-bin/acts_new/acts_resolution.pl?resolution=1991-C037 (noting that parental involvement laws may put some "minors at serious physical, psychological or emotional risk" where there is "family dysfunction"). This position finds support in the Declaration of Jamie Sabino, which demonstrates that many minors who do not involve their parents in an abortion decision have reason to fear that discussion of their decision will provoke a violent reaction by their parents. *See* Sabino Decl. ¶¶ 12, 14, Jt. Appx. at 40-41 ("Adolescents who previously have been abused by their parents, including being struck, beaten, and subjected to severe verbal harassment, know that stress often triggers an abusive episode and thus realistically fear that news of their pregnancy will lead to an attack."). Her declaration also demonstrates that some minors choose not to involve their parents because they have good reason to believe that parents who are coping with traumatic events will not be able to withstand the additional stress of facing a minor daughter's pregnancy and planned abortion. *See id.* at ¶15, Jt. Appx. at 41 (discussing minors who feared that their parents could not cope with additional stress in situations where, for example, a sibling had recently committed suicide, a mother had been diagnosed with a brain tumor, a father had recently been brutally murdered, and a father had recently had a heart attack).

Concern for minors in unstable or unsafe family situations has prompted some religious groups to suggest that involvement laws should specify other adults that minors may turn to for guidance in an abortion decision. *See, e.g.*, A Social Statement on Abortion § V.D (Evangelical Lutheran Church in America, Department for Studies, Division for Church in Society 1991), *available at* http:///www.elca.org/socialstatements/abortion/ ("If a law requires parental consent when the woman is a minor, it should specify other trusted adults as alternatives if parental involvement is inappropriate or unsafe."); *see also* The Book of Resolutions of the United Methodist Church 130 (The United Methodist Publishing House 2004) (encouraging churches and common society to support laws that provide minors with the capacity to consent to pregnancy-related treatment because although "[p]arental support is crucially important and most desirable . . . , treatment ought not be contingent on such support").

In sum, although *amici* encourage parental involvement in a minor's decision concerning pregnancy, *amici* believe that state-mandated notification without adequate life and health exceptions is inappropriate and inconsistent with minors' ability to protect their health and lives in accordance with their religious values.

CONCLUSION

For the foregoing reasons, the Court should affirm the decision of the United States Court of Appeals for the First Circuit.

Respectfully submitted,

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APPENDIX A: LIST OF *AMICI CURIAE*

List of *Amici Curiae*:

American Ethical Union
American Humanist Association
American Jewish Committee
Americans for Religious Liberty
Anti-Defamation League
Colorado Religious Coalition for Reproductive Choice
Disciples for Choice
Disciples Justice Action Network
Indiana Religious Coalition for Reproductive Choice, Inc.
Jewish Reconstructionist Federation
Jewish Women International
Kentucky Religious Coalition for Reproductive Choice
Lutheran Women's Caucus
Maryland Religious Coalition for Reproductive Choice
Methodist Federation for Social Action
Michigan Religious Coalition for Reproductive Choice
Minnesota Religious Coalition for Reproductive Choice
Missouri Religious Coalition for Reproductive Choice
NA'AMAT USA
National Council of Jewish Women, Inc.
Nebraska Religious Coalition for Reproductive Choice
New Jersey Religious Coalition for Reproductive Choice
New Mexico Religious Coalition for Reproductive Choice
Ohio Religious Coalition for Reproductive Choice
Oklahoma Religious Coalition for Reproductive Choice
Religious Coalition of Georgians for Choice
Religious Coalition for Reproductive Choice
Religious Coalition for Reproductive Choice of Connecticut
Religious Coalition for Reproductive Choice: New York

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Religious Coalition for Reproductive Choice of Northern California
Religious Coalition for Reproductive Choice of Southern California
Religious Coalition for Reproductive Choice - Texas
Religious Institute on Sexual Morality, Justice and Healing
The Religious Consultation on Population, Reproductive Health and Ethics
Union for Reform Judaism
Unitarian Universalist Association
Unitarian Universalist Women's Federation
United Church of Christ Justice and Witness Ministries
United Synagogue of Conservative Judaism
West Virginia Religious Coalition for Reproductive Choice
Women of Reform Judaism
Women's Alliance for Theology, Ethics and Ritual

APPENDIX B: STATEMENTS OF INTEREST OF *AMICI CURIAE*

Statements of Interest of *Amici Curiae*:

Religious Coalition for Reproductive Choice

The Religious Coalition for Reproductive Choice is the national coalition of religious and religiously affiliated organizations with official statements and positions in support of reproductive choice as an aspect of religious freedom.

RCRC was founded as a project of the United Methodist Church Board of Church and Society in 1973 to bring religious organizations together to demonstrate religious support for the new U.S. Supreme Court decision Roe v. Wade. Originally named the Religious Coalition for Abortion Rights (RCAR), the Coalition expanded its mission in 1993 to include family planning, sexuality education, and health and human services and accordingly changed its name to the Religious Coalition for Reproductive Choice. RCRC is an educational and advocacy organization, incorporated as a 501c3 and 501c4 and headquartered in Washington, DC. Membership is by application only, and organizations meeting criteria for membership are admitted by vote of the Coalition's governing body. Coalition members are religious and religiously affiliated organizations with official statements and positions in support of reproductive choice as an aspect of religious freedom. Members are listed below. Together the member organizations have more than 20 million members in the United States. The Coalition also includes affiliates in 25 states, a national Clergy for Choice Network with about 2,000 members of all faiths, chapters on campuses and seminaries, and the National Black Church Initiative, guided by an advisory group of prominent African American religious leaders.

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Various Coalition members have joined this brief as amici to state their own positions on the case before the Court. Overall, religious organizations in the Coalition hold that a decision about abortion should be made by the individual, in keeping with her religious beliefs and conscience, and without undue government interference or coercion. They oppose enacting any single religious view about the beginning of human life or human personhood into secular law, as that would violate religious beliefs held by others. Thus, the constitutional right to religious freedom underlies the right to make personal moral decisions about childbearing and abortion. In the case of a minor seeking an abortion, these organizations are among the most dedicated proponents of parental guidance while also recognizing that families have different needs and that state-mandated communication can cause harm to young women in some families.

It is well known that religions believe life is sacred, and a gift from God, and that it is a moral responsibility to promote and protect health and well-being, especially of those who are the most vulnerable. In Ayotte v. Planned Parenthood of Northern New England, the overriding concern of the Religious Coalition for Reproductive Choice is the New Hampshire Act's lack of a health exception and inadequate life exception, which unconstitutionally restricts the ability of an individual to protect her health and even her life when they are threatened by a pregnancy. Because the Act does not contain an explicit health exception, it will require some minor women in endangered health to forego or postpone an abortion while they wait for parental notification or judicial bypass to occur. Additionally, the state's interests underlying the Act—providing minors with parental guidance and

promoting minor's health by giving a parent the opportunity to provide medical information—simply do not apply where an emergency threatens the life or health of the minor and there is insufficient time to notify a parent or obtain a judicial bypass.

Thus, our interest in this case is to protect the health and life of vulnerable young women, who may not be able to seek parental involvement or obtain a judicial bypass. Our religious beliefs lead us to conclude that the compassionate response to a young woman in dire circumstances is to help her to obtain medical care without undue delay.

Also supporting this statement of interest are the following affiliates of the Religious Coalition for Reproductive Choice:

- Colorado Religious Coalition for Reproductive Choice
- Indiana Religious Coalition for Reproductive Choice, Inc.
- Kentucky Religious Coalition for Reproductive Choice
- Maryland Religious Coalition for Reproductive Choice
- Michigan Religious Coalition for Reproductive Choice
- Minnesota Religious Coalition for Reproductive Choice
- Missouri Religious Coalition for Reproductive Choice
- Nebraska Religious Coalition for Reproductive Choice
- New Jersey Religious Coalition for Reproductive Choice
- New Mexico Religious Coalition for Reproductive Choice
- Ohio Religious Coalition for Reproductive Choice
- Oklahoma Religious Coalition for Reproductive Choice
- Religious Coalition of Georgians for Choice
- Religious Coalition for Reproductive Choice of Connecticut

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- Religious Coalition for Reproductive Choice: New York
- Religious Coalition for Reproductive Choice of Northern California
- Religious Coalition for Reproductive Choice of Southern California
- Religious Coalition for Reproductive Choice – Texas
- West Virginia Religious Coalition for Reproductive Choice

Member Organizations of the Religious Coalition for Reproductive Choice (as of October 2005)

- American Ethical Union
- American Humanist Association
- American Jewish Committee
- American Jewish Congress
- Anti-Defamation League of B'nai B'rith
- Catholics for a Free Choice
- Central Conference of American Rabbis (Reform Judaism)
- Church of the Brethren Women's Caucus
- Disciples for Choice
- Episcopal Church in the United States of America
- Episcopal Urban Caucus
- Episcopal Women's Caucus
- General Board of Church and Society, United Methodist Church
- General Board of Global Ministries, Women's Division, United Methodist Church
- Hadassah, WZOA
- Jewish Reconstructionist Federation
- Jewish Women International

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- Lutheran Women's Caucus
- Methodist Federation for Social Action
- NA'AMAT USA
- National Council of Jewish Women
- National Service Conference of the American Ethical Union
- North American Federation of Temple Youth
- Presbyterian Church (USA) Washington Office
- Presbyterian Church (USA) Women's Ministries
- Presbyterians Affirming Reproductive Options
- Rabbinical Assembly (Conservative Judaism)
- Society for Humanistic Judaism
- Union for Reform Judaism
- Unitarian Universalist Association of Congregations
- Unitarian Universalist Women's Federation
- United Church of Christ Justice and Witness Ministries
- United Synagogue of Conservative Judaism
- Women of Reform Judaism, The Federation of Temple Sisterhoods
- Women's American ORT
- Women's League for Conservative Judaism
- Women's Rabbinic Network of the Central Conference of American Rabbis
- Young Religious Unitarian Universalists
- YWCA of the USA

American Ethical Union

The American Ethical Union is the federation of Ethical Societies throughout the United States, and is the national headquarters of the Ethical Culture movement. Ethical Culture is a humanistic religious and educational movement inspired by the ideal that the supreme aim of human life is

working to create a more humane society. Our movement recognizes that the ethical decision of whether of not to terminate a pregnancy should rest with the woman, with the advice of her physician, and we consider it an erosion of fundamental human rights when a legislature presumes to make such ethical choices for a woman regarding her reproductive functions.

American Humanist Association

The American Humanist Association is the oldest and largest humanist organization in the nation, dedicated to ensuring a voice for those with a positive, nontheistic outlook. The mission of the AHA is to promote the spread of humanism, raise public awareness and acceptance of humanism, and encourage the continued refinement of the humanist philosophy. One of humanism's core values is to ensure reproductive freedom. The AHA has been working to advance reproductive rights for over forty years.

American Jewish Committee

The American Jewish Committee ("AJC"), a national organization of approximately 150,000 members and supporters with 33 regional chapters, was founded in 1906 to protect the civil and religious rights of Jews. AJC believes that this goal can best be achieved by preserving the constitutional rights, including the fundamental right of access to abortion, of all Americans. In the case of parental notification and consent requirements, AJC believes that such regulations place a substantial burden on a pregnant minor's right to choose the course of action that is safest for her, in keeping with her religious beliefs, and that best protects her ability to bear future children. For these reasons, AJC believes that the statute challenged in this case is unconstitutional.

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Americans for Religious Liberty

Americans for Religious Liberty (ARL) is an ecumenical nationwide nonprofit educational organization, founded in 1982, with approximately 2,500 members, dedicated to defending and advancing freedom of conscience, religious freedom, and church-state separation. ARL has been an amicus in a number of cases before the Supreme Court, including cases on reproductive rights. ARL's consistent position has been that the First Amendment and other sections of the Constitution bar any level of government from interfering with the right of any woman of any age to follow her own conscience in dealing with a problem pregnancy.

Anti-Defamation League

The Anti-Defamation League (ADL), founded in 1913, is a national Jewish human relations organization dedicated to principles of religious and individual liberty, including the right to privacy. ADL views reproductive choice as an issue of personal and religious freedom. Accordingly, ADL believes that a woman's right to make her own decision concerning abortion is constitutionally protected and should be made in accordance with her own religious and moral convictions, without governmental intrusion. ADL has participated as *amicus curiae* in numerous cases before the Supreme Court and other courts when these issues have been implicated, including *Planned Parenthood of Eastern Pa. v. Casey*, 505 U.S. 833 (1992), and *Stenberg v. Carhart*, 530 U.S. 914 (2000).

Disciples for Choice

Disciples for Choice was founded May 8, 1995 in Fort Smith, Arkansas and is incorporated in the state of Arkansas.

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Disciples for Choice is an organization of members and friends of the Christian Church (Disciples of Christ in the United States in Canada) dedicated to maintaining reproductive choice for all persons. The organization works to ensure that every woman is free to make decisions about when to have children according to her own conscience and religious beliefs without government interference.

Disciples for Choice have taken an active role in the support of freedom choice in respect of reproductive activity because of our commitment to principles of religious freedom and separation of church and state. Time and again Disciples have spoken to the protection of the right of ALL persons to individual beliefs regarding abortion, whether for or against.

Disciples for Choice oppose any further efforts to limit abortion availability. The basic constitutional protection for abortion applies to females of *all* ages. The parental notification law in question here does not even contain an explicit health exception, it will require some minor women to experience endangered health to forego or postpone an abortion while they wait for parental notification of judicial bypass to occur.

Disciples for Choice encourages the court NOT to further restrict the ability of *any* person to protect her health and perhaps her life when they are threatened by a pregnancy.

Disciples Justice Action Network

Disciples Justice Action Network was founded in 1996 in Chicago, Illinois, and is incorporated in that state and is a 501 C 3 federal tax exempt organization. DJAN understands

itself to be doing and supporting what our faith calls upon us to do; taking strong positions of conscience on social issues, including justice issues within our communion. DJAN operates under a Design (Bylaws) adopted in June, 1996 and is governed by a team (Executive Committee) of twelve persons, with a staff of two, a Director and a Minister of Justice Education. DJAN has just under 2,000 supporters and its constituency is made of churches, other justice issue groups, and individuals.

One of the strongly supported human rights justice issues supported by DJAN is that of women's reproductive rights. Because the Gospel envisions a society in which all are free from oppression, despair, poverty, violence and marginalization, DJAN is compelled to speak against the New Hampshire parental notification law in the case *Ayotte v. Planned Parenthood of Northern New England*

In all instances, women's lives and health must be given paramount consideration in abortion related decisions. We understand the Ayotte case restricts the ability of persons, in this case minor persons, to protect their own health and possibly their lives through limitations and restrictions within this Act.

DJAN urges the Court to not mandate parental support as contingent for a minor's decision concerning pregnancy.

Jewish Reconstructionist Federation

Jewish Reconstructionist Federation is the synagogue arm of the Reconstructionist movement, serving 107 congregations and havurot across North America. A voice of

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Reconstructionist Judaism in the greater Jewish world, JRF provides a wide array of services to its affiliates. People experience Reconstructionist congregations as open, inclusive, and egalitarian, both in principle and in practice. JRF- affiliated communities are autonomous, progressive, and democratic.

The following statement is updated from the JRF 1981 statement in support of the Religious Coalition for Reproductive Choice, an organization that JRF is officially affiliated with:

Although the Jewish tradition regards children as a blessing, a gift of life itself, the tradition permits the abortion of an unborn child in order to safeguard the life and physical and mental health of the mother. The rabbis did not take a consistent stand on the question of whether a fetus resembles a "person." They did not think it possible to arrive as a final theoretical answer to the question of abortion, for that would mean nothing less than to be able to define convincingly what it means to be human.

We recognize that abortion is a painful choice. Any prospective parent must make an agonizing decision between competing claims – the fetus, health, the need to support oneself and one's family, the need for time for a marriage to stabilize, responsibility for other children and the like.

Reconstructionist Judaism recognizes that we live in both religious and civic cultures simultaneously. The law of the United States of America supports a woman's right to obtain an abortion, although limitations and restrictions have been

applied. The JRF likewise supports the preservation and protection of the reproductive rights of women, and the individual right of women to make the painful decision to abort or not to abort.

Jewish Women International

Ayotte v. Planned Parenthood of Northern New England is a case challenging the constitutionality of New Hampshire's parental notification law. This case is the first U.S. Supreme Court case in five years to deal with access to abortion services and the first for the Court in its new composition. The district court and 1st Circuit struck down the law because it lacks a health exception and an adequate life exception. The issue before the Supreme Court is the appropriate standard for facial challenges to abortion statutes.

Jewish Women International (JWI), with the support of our 75,000 members, supporters and partners in over 100 communities around the United States, is recognized as the leading Jewish organization committed to ensuring that women and girls are safe in their homes and relationships. As the former B'nai B'rith Women, JWI has been actively involved in strengthening the lives of women and children for over 100 years. In 1968, prior to *Roe vs. Wade*, our organization issued its first resolution on abortion, calling for abortion laws that would protect women from having to seek often life-threatening, illegal abortions.

Jewish Women International firmly supports the right of all women and girls to reproductive freedom. The ability to exercise choice frees women and girls from the oppression of others making life-shaping decisions for them. Jewish

Women International believes it is the duty of the court to protect a woman, even as a minor, in her right to make individual decisions, independent of a guardian or without a judicial bypass, in cases where her health or life are at risk.

Methodist Federation for Social Action

The Methodist Federation for Social Action (MFSA) is an independent organization uniting United Methodist activists to take action on justice, peace and liberation issues. Since 1907, MFSA has been working primarily through the ministries of the denomination, supporting and augmenting the church's activities on behalf of justice at the local and national level. MFSA has chapters in forty of the sixty United Methodist Church's Annual Conferences within the US.

The Methodist Federation for Social Action affirms the goodness of God's creation and the sacredness of all creation. Therefore, we do not take the question of abortion lightly. We envision a world where every child is a wanted child, while recognizing the realities of an imperfect world. Because we regard all life as sacred, we regard the life, health and well being of the mother to be just as valuable as the potential life of the fetus. We also believe that reproductive issues must remain free from government interference. For secular authority to codify any particular religious tradition or position into law is a violation of the religious liberty of all religious traditions whose teachings differ from that law. We affirm that only the individuals most intimately involved in a crisis pregnancy can adequately weight the factors and values in conflict and come to a decision about the most appropriate course of action. In view of this, we support the right of women, regardless of their age, to choose for

themselves with whom to seek counsel as to whether they should carry their pregnancy to term, keep their child, give their child up for adoption, or terminate their pregnancy.

NA'AMAT USA

NA'AMAT USA is the Women's Labor Zionist Organization of America, Inc. It has sister organizations in fourteen different countries. The international headquarters is located in Tel Aviv, Israel. The term NA'AMAT is a Hebrew acronym meaning "Movement of Women and Volunteers." NA'AMAT USA is currently celebrating its 80th anniversary.

Since its inception, the right to privacy has been an important provision of our movement's mission. Therefore the Pro-Choice issues and all of its ramifications are a significant component of our national policy agenda and our strong advocacy work. NA'AMAT USA welcomes the opportunity to sign on to this important amicus brief: *Ayotte v. Planned Parenthood of Northern New England.*

National Council of Jewish Women, Inc.

The National Council of Jewish Women, Inc. (NCJW) is a volunteer organization, inspired by Jewish values, that works to improve the quality of life for women, children, and families and to ensure individual rights and freedoms for all through its network of 90,000 members, supporters, and volunteers nationwide. The National Council of Jewish Women works to ensure and advance individual and civil rights. As such we endorse and resolve to work for "the protection of every female's right to reproductive choice, including safe and legal abortion, and the elimination of obstacles that limit reproductive freedom." Consistent with our priorities and resolutions, NCJW joins this brief.

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Religious Institute on Sexual Morality, Justice and Healing

The Religious Institute on Sexual Morality, Justice and Healing is pleased to join the brief of religious organizations in *Ayotte v. Planned Parenthood of Northern New England* in support of Planned Parenthood. The Religious Institute is an ecumenical, interfaith organization, founded in 2001, to advocate for sexual health, education, and justice in faith communities and society. The Religious Institute network includes more that 2400 clergy, theologians, and religious leaders from more than 40 denominations. These religious leaders are united in their faith-based commitment to sexual and reproductive rights, including access to safe, legal, and accessible abortion services. We call for a health and life exception out of our commitment to the teachings of many religious traditions that the life and health of the woman must always take precedence over the life of the fetus. We support the rights of minors: while we encourage adolescent women to involve parents and family members in their decisions about a pregnancy, we must also acknowledge that not every family can offer this support. All women must be able to make their own moral decisions based on their own conscience and faith.

Union for Reform Judaism

The Union for Reform Judaism ("Union") is the central body of the Reform Movement in North America including 900 congregations encompassing 1.5 million Reform Jews.

We believe that in any decision whether or not to terminate a pregnancy, the individual family or woman must weigh their faith tradition as they struggle to formulate their own religious and moral criteria to reach their own personal decision. We

do not encourage abortion, nor favor it for trivial reasons, or sanction it "on demand." We believe, however, that the proper locus for formulating these religious and moral criteria and for making this decision must be the individual family or woman and not the state or other external agency.

While recognizing the right of religious groups whose beliefs differ from ours to follow the dictates of their faith in this matter, we vigorously oppose the attempts to legislate the particular beliefs of those groups into the law that governs us all. This is a clear violation of the First Amendment. Furthermore, it may undermine the development of interfaith activities. Mutual respect and tolerance must remain the foundation of interreligious relations. We support the legal right of a woman to act in accordance with the moral and religious dictates of her conscience with respect to abortion.

Unitarian Universalist Association

The Unitarian Universalist Association is a religious association of more than 1,000 congregations in the United States, Canada and elsewhere. Through its democratic process, the Association adopts resolutions consistent with its fundamental principles and purposes. In particular, the Association has adopted numerous resolutions affirming the principles of separation of church and state and personal religious freedom. Most relevant to the case at bar are the Association's resolutions specifically supporting the fundamental right of individual choice in reproductive matters and the right of a female to have an abortion at her own request upon medical/social consultation of her own choosing.

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United Church of Christ Justice and Witness Ministries
The United Church of Christ (UCC) was founded in 1957 with the union of the Evangelical and Reformed Church and the Congregational Christian Churches. Today there are more than 6,000 local UCC congregations comprising 1.3 million members. The UCC, through its General Synod, a representative body which meets biennially, has supported access to the full range of reproductive choices for all women since 1971 when a resolution in support of freedom of choice was voted by the 8th General Synod of the United Church of Christ.

The values of freedom, responsibility and covenant form the core of the UCC Constitution. As individual members of the Body of Christ, we are encouraged through prayer, study, dialogue, and discernment of God's will for our lives to make decisions and act in the world in accordance with our beliefs. Being in covenant with one another and with God is an important element of this decision making because our freedom to act comes with responsibility to others. We believe that the word of God, which is the basis of our faith and contains many eternal truths, is not a fixed and final word. As John Robinson said, "There is yet more truth and light to break forth from God's holy word."

Our religious heritage also stresses reverence for human life, the enhancement of human life and the protection of the rights of persons. Through the years, UCC General Synods have affirmed the call to celebrate and nurture life, including the protection of the health and well-being of those confronted with the difficult choice of whether or not to terminate a pregnancy. Given that theological and scientific views on

when human life begins are so numerous and varied, the actions of UCC General Synods have affirmed that every woman must have the freedom of choice to follow her personal and moral religious convictions concerning such a decision.

We are deeply concerned that the New Hampshire law regarding parental notification lacks a health exception and would thereby unconstitutionally restrict the ability of an individual (in this case a minor) to protect her health and even her life if threatened by a pregnancy which posed such risks. The minor's mental health is also an essential condition of health. In the instance in which an emergency threatens the life or health of a minor, and there is insufficient time to notify a parent or obtain judicial bypass, we would assert that the state's interest in the Act does not apply. We recognize that the majority of minor girls who become pregnant do inform their parents who assist them in making an appropriate decision, but we also know that there are some situations when minors cannot inform their parents or legal guardian of a pregnancy. These young women must not bear an undue burden of parental notification.

The United Synagogue of Conservative Judaism

The United Synagogue of Conservative Judaism, also known as USCJ, was founded in 1913 as the association of Conservative synagogues in North America. The United Synagogue of Conservative Judaism promotes the role of the synagogue in Jewish life in order to motivate Conservative Jews to perform *mitzvot* (commandments) encompassing ethical behavior, spirituality, Judaic learning, and ritual observance. USCJ encompasses over 700 synagogues in the United States with approximately 1.5 million congregants.

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When unfortunate circumstances, such as when the life or health of the mother is in jeopardy, Judaism sanctions, even mandates abortion. While Judaism does not provide a blanket pro-abortion stance, we support maintaining the legality and accessibility of abortion so that in those cases where our religious authorities determine that an abortion is warranted according to Jewish law, obtaining that abortion will not be hindered by our civil law. Therefore, USCJ has a vested interest in ensuring that our members can fulfill their religious obligations.

Women of Reform Judaism

Women of Reform Judaism, an affiliate of the Union of Reform Judaism, is the collective voice and presence of women in congregational life. Founded in 1913, Women of Reform Judaism is comprised of 75,000 women in 550 local groups nationwide. Committed to the teachings of our tradition, we are mandated by our resolutions to serve humanitarian causes, including women's health and well-being. Our comprehensive 1989 Reproductive Rights resolution calls for "the right of every woman, without regard to age or socioeconomic condition, based on her own religious and moral convictions, to make her own choices about reproductive life."

Women's Alliance for Theology, Ethics and Ritual

The Women's Alliance for Theology, Ethics and Ritual (WATER) is a non-profit educational center that provides resources, networking and education that encourage feminist work in religion. WATER was founded in 1983 by Mary E. Hunt and Diann L. Neu as an interreligious organization. The Alliance connects thousands of people of various faiths and encourages creative, religiously-informed social justice work.

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WATER colleagues hold a wide variety of opinions on abortion, the overwhelming majority of which are pro-choice. As such, WATER supports a woman's right to choose and claims that a good society makes that possible. In the case of *Ayotte v. Planned Parenthood of Northern New England*, we believe that the lack of an explicit health exception and inadequate life exception unconstitutionally restrict the ability of a young woman to protect her health when she is pregnant. Should such exceptions not be available, a young woman risks serious health consequences while awaiting parental notification of judicial bypass. There is no religious justification for such injustice.

We therefore join as *amici* in the case of *Ayotte v. Planned Parenthood of Northern New England.*